

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 227**

**[Docket No. R-1490; RIN 7100 AE-19]**

#### **Unfair or Deceptive Acts or Practices (Regulation AA)**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

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**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is repealing its Regulation AA, 12 CFR part 227, which was issued pursuant to its rule writing authority under section 18(f)(1) of the Federal Trade Commission Act (FTC Act or Act). Section 1092(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) repealed section 18(f)(1) of the FTC Act, thus eliminating the Board's rule writing authority under the Act.

**DATES:** The final rule is effective **[Insert date 30 days after publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Mandie K. Aubrey, Counsel, Division of Consumer and Community Affairs, at (202) 452-3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The FTC Act directs the Federal Trade Commission (FTC) to promulgate rules to define and prevent unfair or deceptive acts or practices for persons other than banks,

savings and loans, and Federal credit unions.<sup>1</sup> Pursuant to the Act, in 1984 the FTC issued its Credit Practices Rule, which applied to persons within the FTC’s jurisdiction.<sup>2</sup>

Prior to amendments to the FTC Act made by the Dodd-Frank Act in 2010, section 18(f)(1) of the FTC Act required the Board to promulgate rules applicable to banks that were “substantially similar” to these FTC rules, with some exceptions.<sup>3</sup> In addition, section 18(f)(1) of the Act provided the Board the authority to prescribe additional rules for banks addressing unfair or deceptive acts or practices – regardless of whether the FTC had promulgated rules about such acts or practices. The Act also required the Board to take appropriate action on complaints about unfair or deceptive acts or practices by banks.<sup>4</sup>

Pursuant to its rule writing authority in section 18(f)(1) of the FTC Act, the Board issued Regulation AA, including the Board’s credit practices rule, which was adopted in 1985.<sup>5</sup> The Board’s credit practices rule was substantially similar to the FTC’s Credit Practices Rule; in adopting the rule, the Board relied on the extensive findings that had been made by the FTC that the prohibited practices were unfair or deceptive.

The Board’s credit practices rule in Regulation AA prohibited banks from using certain remedies to enforce consumer credit obligations and from including these

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<sup>1</sup> 15 U.S.C. §§ 45 and 57a(a)(1).

<sup>2</sup> 16 CFR §§ 444.1-.5.

<sup>3</sup> Section 18(f)(1) of the Act was previously codified at 15 U.S.C. § 57a(f)(1). The Board was not required to impose substantially similar rules if it found that: (1) such acts or practices of banks were not unfair or deceptive, or (2) implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

<sup>4</sup> The same authority that was conferred to the Board by section 18(f)(1) of the Act also applied to the Federal Home Loan Bank Board (FHLBB) (predecessor to the Office of Thrift Supervision), with respect to savings associations, and to the National Credit Union Administration (NCUA), with respect to Federal credit unions.

<sup>5</sup> 12 CFR Part 227, subpart B.

remedies in their consumer credit contracts. The rule also prohibited banks from: (1) obligating a co-signer on the debt unless the co-signer previously received a clear and conspicuous written notice explaining the nature of the co-signer's obligations and liabilities under the contract; and (2) imposing a late fee when a consumer makes a full loan payment on time or within the grace period, solely because the consumer did not pay a previous late fee imposed on an earlier installment (the "pyramiding" of late fees).

In addition, Regulation AA contained a provision that informed consumers how to file a complaint regarding a state member bank and explained the Board's procedure for responding to such complaints.<sup>6</sup> Regulation AA also contained information regarding state exemptions from the credit practices rule.<sup>7</sup> The Board published, separately from the regulation, Staff Guidelines to clarify how Regulation AA applied in particular circumstances.<sup>8</sup>

The Dodd-Frank Act<sup>9</sup> repealed section 18(f)(1) of the FTC Act.<sup>10</sup> This legislative repeal of the Board's rulemaking authority nullified the provisions in Regulation AA that were issued pursuant to that authority. Regulation AA did not transfer from the Board to the Consumer Financial Protection Bureau (Bureau) under the Dodd-Frank Act, as did other consumer protection laws and regulations.<sup>11</sup> As a result, neither the Board nor the

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<sup>6</sup> 12 CFR § 227.2. This provision listed an address to which consumers may send their complaint, and explained that consumers will receive, within 15 business days, either a substantive response or an acknowledgment setting a reasonable time for a substantive response.

<sup>7</sup> 12 CFR § 227.16.

<sup>8</sup> <http://www.federalreserve.gov/regulations/cg/crdtpracrul.htm>.

<sup>9</sup> Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010).

<sup>10</sup> See section 1092(2) of the Dodd-Frank Act. The repeal of section 18(f)(1) of the FTC Act also repealed the authorities of the former FHLBB and the NCUA. See *supra* note 4. Section 1092(2) of the Dodd-Frank Act did not repeal FTC Act rule writing authority for the FTC, so the FTC Credit Practices Rule remains in effect. See *supra* note 2.

<sup>11</sup> The Dodd-Frank Act transferred rule writing authority only for "Federal consumer financial laws," but did not include the FTC Act in the definition of "Federal consumer financial law." Therefore, Regulation AA was excluded from the authority that transferred from the Board to the Bureau. See Dodd-Frank Act

Bureau has authority to promulgate rules pursuant to the FTC Act. The Bureau, however, was given separate authority under the Dodd-Frank Act to promulgate rules to identify unfair, deceptive, or abusive acts or practices.<sup>12</sup>

In August 2014, the Board published a proposal to repeal Regulation AA (Proposed Rule).<sup>13</sup> Simultaneously with the proposed repeal of Regulation AA, the Board joined the Bureau, Federal Deposit Insurance Corporation, NCUA, and Office of the Comptroller of the Currency in issuing interagency guidance stating that, depending on the facts and circumstances, a depository institution might violate the prohibition against unfair or deceptive practices in the FTC Act and the Dodd-Frank Act if it engages in the practices prohibited by the former credit practices rules.<sup>14</sup>

## **II. Discussion**

Fourteen commenters responded to the proposed repeal of Regulation AA. Three individual commenters stated that Regulation AA was a necessary and helpful regulation; two of these commenters stated that the Board's reasons for repealing the regulation were unclear. A comment letter received from seven consumer advocate organizations acknowledged that the Board's repeal of Regulation AA was required by the Dodd-Frank Act. In their letter, these commenters also provided recommendations to the Bureau

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sections 1061(a)(1), (b)(1) (transferring authority of "Federal consumer financial laws" to the Bureau) and section 1002(14) (defining "Federal consumer financial laws").

<sup>12</sup> Section 1031 of the Dodd-Frank Act.

<sup>13</sup> 79 FR 51115 (Aug. 27, 2014).

<sup>14</sup> "Interagency Guidance Regarding Unfair or Deceptive Credit Practices" (Aug. 22, 2014).

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140822a2.pdf>

regarding acts or practices that the Bureau now has to authority to regulate if it finds they are unfair or deceptive.<sup>15</sup>

Eight commenters addressed the interagency guidance that was issued simultaneously with the proposed repeal of Regulation AA. One individual commenter believed the guidance would discourage banks from engaging in unfair or deceptive acts or practices, but seven consumer advocate commenters recommended strengthening the guidance language. The consumer advocate commenters also recommended that the Board issue additional guidance regarding other acts or practices that the commenters believe should be declared unfair or deceptive acts or practices.

The Board is finalizing the repeal of Regulation AA as proposed. As the Board discussed in the Proposed Rule, the Dodd-Frank Act eliminated the Board's rule writing authority under the FTC Act, which nullified the regulation. The Board will continue to monitor developments with respect to unfair or deceptive acts or practices and assess whether to issue additional supervisory guidance.

The repeal of Regulation AA also eliminates Subpart A of the regulation, which generally describes the internal procedures used by the Board in handling consumer complaints. The Board did not receive comment on the removal of these internal procedures from the Code of Federal Regulations. Information about how the Board processes consumer complaints is provided on the Board's public website.<sup>16</sup>

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<sup>15</sup> One state chartered bank commenter did not address the proposed repeal, but objected to examiners' citations of banks for unfair or deceptive practices in the supervisory process. Two individual commenters did not address the proposed repeal of Regulation AA.

<sup>16</sup> <https://www.federalreserveconsumerhelp.gov/>

### III. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act<sup>17</sup> (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* Regulation AA was issued pursuant to section 18(f)(1) of the FTC Act. As noted above, the Dodd-Frank Act repealed this provision of the FTC Act.<sup>18</sup> Accordingly, the Board is repealing its Regulation AA.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board did not receive any comments on the initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The final rule repeals Regulation AA, which was issued pursuant to section 18(f)(1) of the FTC Act. As a result of the FTC Act amendments made by the Dodd-Frank Act, the Board no longer has rule writing authority under section 18(f)(1). The legislative repeal of the Board's rulemaking authority nullified the provisions in Regulation AA that were issued pursuant to that authority. Consequently, the Board's repeal of the regulation, which no longer has legal effect, will not affect any entity, including any small entity. The repeal of Regulation AA will also remove information about how the Board processes consumer complaints from the Code

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<sup>17</sup> 5 U.S.C. 601 et seq.

<sup>18</sup> See section 1092(2) of the Dodd-Frank Act.

of Federal Regulations. This is not expected to have an effect on small entities because that information is provided on the Board's public website.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule repeals Regulation AA and therefore does not impose any recordkeeping, reporting, or compliance requirements on any entities.

5. *Significant alternatives to the final revisions.* Because the repeal of Regulation AA will have no impact, there are no alternatives that would further minimize the economic impact of the final rule on small entities.

#### **IV. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The final rule contains no requirements subject to the PRA.

#### **List of Subjects in 12 CFR Part 227**

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

#### **Authority and Issuance**

For the reasons set forth in the preamble, the Board amends Regulation AA, 12 CFR part 227, and the Official Staff Commentary, as set forth below:

#### **PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)**

1. Part 227 is removed and reserved.

**By order of the Board of Governors of the Federal Reserve System, February 11, 2016.**

Robert deV. Frierson (signed)

Robert deV. Frierson,  
Secretary of the Board.